IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 918 of 1999

with

CIVIL REVISION APPLICATION No 1149 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF DECD.RAMANBHAI VIRABHAI

Versus

BALUBEN,WD/O SOMABHAI CHHOTABHAI

Appearance:

1. Civil Revision Application No. 918 of 1999
   MR HARESH J TRIVEDI for Petitioners No. 1-1/6
   MR AB MUNSHI for Respondent No. 1
2. Civil Revision Application No. 1149 of 1999
   MR AB MUNSHI for Petitioner No. 1
   ..... for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. The petitioners in Civil Revision Application No. 918 of 1999 are the plaintiffs in Civil Suit No.393 of 1998 filed in the court of Civil Judge (S.D.), Vadodara. The respondent is the defendant in the said suit. The Civil Revision Application No. 1149 of 1999 has been filed by the defendant of the said suit.

2. The parties are the heirs of one common ancestor, namely, one Mansukhbhai. The plaintiffs are the grandsons of Mansukhbhai, whereas the defendant is the widow of the deceased son of Mansukhbhai. The plaintiffs have filed the said suit on the apprehension that since the husband of the defendant had died without leaving any heir and since there was a custom of remarriage in the cast and the defendant being young, if she marries again, they will lose their rights in the ancestral property. They therefore prayed for a declaration that the Survey Nos. 103. 261 and 275 situated in village Tandalja, Taluka Vadodara were ancestral property and defendant should be restrained from disturbing their possession of the suit land.

3. The plaintiffs also prayed for temporary injunction in the same terms. The defendant also made an application for temporary injunction contending that they were in possession of the suit land and, therefore, their possession should be protected.

4. The Trial Court allowed both the applications partly and defendants were ordered to maintain status-quo with regard to Survey No.103, while plaintiffs were ordered to maintain status-quo with regard to Survey Nos. 261 and 275.

5. The defendant filed two appeals against the said order. The learned 3rd Extra Assistant Judge, Vadodara allowed both the appeals partly and modified the order passed by the Trial Court to the extent that the status-quo with regard to 2 Acres and 10 Guntha of western portion of Survey No.103 shall be maintained by the defendant no.1 and the order of status-quo for other 1/2 portion of the said survey numebr was vacated. The plaintiffs were directed to maintain status-quo with regard to eastern portion measuring 72 Acres and 10 Guntha of the said land and Survey No.261 and 275. The cross-objections filed by the plaintiffs were also dismissed.

6. Both the plaintiffs and the defendant have filed Civil Revision Application as stated earlier.

7. I have heard learned counsel of the parties. I was referred to a document dated 12.1.1967 which the plaintiffs had produced at Exh.4/1 and the learned Appellate Judge after interpreting contents of the said document came to the conclusion that the plaintiffs were given possession only of 1/2 portion of Survey No.103 towards the west of the said Survey Number. The learned Judge has also confirmed the finding of the Trial Court that the defendant was in possession of Survey No.261 and 275. The learned Appellate Judge has rightly observed [that the Trial Court has failed to take into account the contents of the said document. In the circumstances, it cannot be said that the learned Appellate Judge has committed illegality or material illegality in exercise of his jurisdiction. Hence, there is no reason to interfere in exercise of revisional jurisdictional under Section 115 of the Civil Procedure Code. Both, the Civil Revision Applications are therefore dismissed. Rule discharged. No order as to costs.

(M.C.Patel,J.)
(vipul)